

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KAREN D. SMITH,
Plaintiff,
v.

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS OF THE CWABS
INC., ASSET-BACKED CERTIFICATES,
SERIES 2007-SD1, and NEW PENN
FINANCIAL LLP, d/b/a SHELLPOINT
MORTGAGE SERVICING, LLC, MTC
FINANCIAL INC., DBA TRUSTEE CORPs,
and MALCOLM & CISNEROS, A LAW
CORPORATION,
Defendant

Case No.: 2:19-cv-00538-JCC

DECLARATION OF KAREN D. SMITH IN
SUPPORT OF OPPOSITION TO
DEFENDANT MALCOLM & CISNEROS'S
MOTION FOR SUMMARY JUDGMENT

NOTED ON MOTION DOCKET:

November 13, 2020

I, Karen Smith, declare as follows:

1. I am the Plaintiff in this lawsuit and I have personal knowledge of the facts as
stated herein. The information contained herein is true and correct to the best of my knowledge
at this time.

1 2. On February 9, 2007, I borrowed money from Mortgage Solutions Management,
2 Inc., a California corporation engaged in residential lending in Washington, and secured the loan
3 with a Deed of Trust on my residence at 819 21st Avenue, Seattle, WA 98122, and legally
4 described as:

5 LOT 16 AND 17 IN BLOCK 2 OF WALLA WALLA ADDITION TO THE CITY OF
6 SEATTLE, AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 81,
7 RECORDS OF KING COUNTY AUDITOR; SITUATE IN THE CITY SATE COUNTY
8 OF KING, STATE OF WASHINGTON.

9 3. On July 1, 2007, I ceased making payment on the loan.

10 4. On June 5, 2008 I filed for bankruptcy.

11 5. On September 11, 2009, I received a bankruptcy discharge in my chapter 7
12 bankruptcy.

13 6. My bankruptcy case closed on September 18, 2009.

14 7. I have not made a payment on the loan since July 2007.

15 8. On November 30, 2016, with the help of an attorney, I requested a referral to
16 foreclosure mediation under Washington State's Foreclosure Fairness Act, RCW 61.24.165
17 ("FFA Mediation").

18 9. I represented myself in two FFA mediation sessions on April 27, 2017 and
19 January 9, 2018.

20 10. Unfortunately, after several months in the FFA mediation, Shellpoint through
21 their attorneys Malcolm & Cisneros, informed me that the investors who owned the promissory
22 note for her mortgage loan had not given contractual authority to modify the loan. Attached as
23 **Exhibit A** is a letter I received from Shellpoint dated July 19, 2017, in which Shellpoint
24 informed me, for the first time, that they were unable to modify my loan because the "investor or
25 group of investors" did not give contractual authority to modify my loan.

26 11. Attached as **Exhibit B** is an email from Grant Courtney to the mediator and
myself dated August 24, 2017, in which Malcolm & Cisneros for the first time admit to us that
they did not have authority to modify the loan from the start of the mediation.

1 12. Attached as **Exhibit C** is an email from Julia Devin dated April 27, 2017, to
2 myself and attorney Grant Courtney, summarizing the discussions and outcome of the mediation
3 earlier that day.

4 13. Attached as **Exhibit D** is the Foreclosure Mediation Report/Certification issued
5 by the mediator, Julia Devin, in which she finds that the Defendants did not mediate in good
6 faith.

7 14. Attached as **Exhibit E** is a copy of the summons and complaint for judicial
8 foreclosure that was filed in King County Superior Court by Malcolm & Cisneros and served on
9 me on approximately April 29, 2018.

10 15. I paid the original mediation fee and a continuation fee to participate in the
11 foreclosure fairness act mediation, which provided me with no benefit. Attending the sessions,
12 preparing the loan modification packets and responding to the numerous emails also took time away
13 from my business, and when I discovered nearly nine months after the original referral to mediation
14 that the attorneys from Malcolm & Cisneros either knew or should have known that their client did
15 not even have a loan modification program, and that there was nothing I could do to obtain a loan
16 modification, I was very distraught and unable to rest and enjoy my own home, because I lived in
17 fear that I would lose my house to foreclosure. I also paid my attorney to investigate the nature and
18 culpability of M&C and the other defendants prior to filing this complaint. I have attached a copy of
19 a cancelled check paid to my attorney on October 14, 2018 as evidence of that money loss hereto as
20 **Exhibit P.**

21 16. Attached as **Exhibit O** is a letter I received from Malcolm and Cisneros on March
22 19, 2020 informing that I they were going to commence a foreclosure.

23 17. After being served with a judicial foreclosure complaint for a mortgage that was
24 passed the statute of limitations, instead of correcting their mistake and mitigating a wrong,
25 Malcolm & Cisneros went forward with an appeal that took over a year and prolonged the
26 negative credit affects on my credit profile and prevented me from getting a fresh start as soon as
the debt became time barred. This all could have been avoided, but now I expect to have a
negatively impacted credit profile for about ten years. If I ever want to remodel or fix up my

1 house, I expect this judicial foreclosure will affect my ability to get a loan.

2 18. Also, I wasted months of time, mediation fees, and attorney fees in this fruitless
3 exercise because Defendants failed to inform her sooner that the investor would not allow a
4 modification of my loan.

5 This Declaration made under penalty of perjury under the laws of the United States of America
6 this November 10th at Seattle, Washington.

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10 _____
11 Karen D. Smith
12 Plaintiff
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